

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SH & ASSOCIATES, INC.,
an Illinois Corporation,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant,

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)

FILED STAMP: AUG. 20, 2008

08CV4767

Case No. JUDGE ANDERSEN

MAG. JUDGE COLE

J. N.

**COMPLAINT FOR DECLARATORY JUDGMENT
TO QUIET TITLE AND INJUNCTIVE AND MONETARY RELIEF
PURSUANT TO 26 U.S.C.A §7426 AND 28 U.S.C.A. §2410**

NOW COMES Plaintiff, SH & ASSOCIATES, INC., by its attorneys, WEISSBERG AND ASSOCIATES, LTD., and as its Complaint for Declaratory Judgment To Quiet Title and Injunctive and Monetary Relief against Defendant, United States of America ("Defendant"), states as follows:

1. This is an action seeking a declaratory judgment to obtain a judicial decree that the Notice of Federal Tax Lien Filing-Nominee or Alter Ego ("Lien Notice") that Defendant served upon Plaintiff on or about January 31, 2008, which imposes a cloud and encumbrance on the title of personal and real property of Plaintiff are void, without legal effect, are violative of the law, and do not constitute a valid encumbrance and cloud on title.

2. The Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1348, 1331; 12 U.S.C §1819; 28 U.S.C. §2410; 26 U.S.C. §7426.

3. Venue is proper pursuant to 28 U.S.C. §1391(a) as Plaintiff's primary business location is in this district and the majority of the acts occurred within this district.

4. Plaintiff, SH & Associates, Inc.("Plaintiff"), is a corporation duly formed and organized under the laws of the State of Illinois, with its principal place of business in Oakbrook, Illinois. Plaintiff is, *inter alia*, in the business of buying and selling real estate.

5. United States of America ("United States") is substituted as a matter of law for the Internal Revenue Service ("IRS").

COUNT I DECLARATORY JUDGMENT

6. On April 25, 2005, the United States and Samy Hammad ("Hammad") entered into a Consent Judgment in the amount of \$340,296.01 for unpaid taxes and penalties in the case of *Urban v. United States of American*, Case No. 03-cv-6630, before Judge Ashman in the United State District Court, Northern District of Illinois, Eastern Division ("Judgment").

7. Seemingly based on the Judgment against Hammad, the IRS Office located at 2001 Butterfield Road, Downers Grove, Illinois served Plaintiff with the Lien Notice on or about January 31, 2008. A copy of the Lien Notice is attached hereto as Exhibit 1.

8. The Lien Notice was filed against Plaintiff allegedly based on the fact that the Defendant has improperly deemed Plaintiff to be an alter ego or nominee of Hammad.

9. Hammad is not a shareholder, director or employee of Plaintiff, has never co-mingled assets with Plaintiff, Hammad was never paid or compensated by Plaintiff in any manner, and is otherwise not an alter-ego or nominee of Plaintiff.

10. On or about March 3, 2008, Plaintiff has filed an appeal with the IRS objecting to the Notice of Lien against Plaintiff ("Appeal"). See, copy of Appeal documents attached hereto as Exhibit 2.

11. Plaintiff followed up with Ms. Buckley, an agent of the IRS on July 30, 2008, to check on the status of the Appeal and was told that the Appeal had not even been assigned to an appeals agent yet. See, email confirming conversation that Plaintiff's attorney's office had with the IRS attached hereto as Exhibit 3.

12. Accordingly, Plaintiff has been required to file this lawsuit to assure a timely and expedited resolution to this matter.

13. The improper Notice of Lien had the effect of placing improper encumbrances on the personal and real property of Plaintiff, which prevented Plaintiff from operating its business and buying and selling properties because each property transaction that Plaintiff was involved with, the IRS Lien interfered with said transaction. The Notice of Lien had the direct effect of causing Plaintiff's business to completely shut down.

14. A real and justifiable controversy exists between the parties with respect to whether the Lien Notice should be removed immediately as an improper cloud on title and encumbrance on Plaintiff's property and assets.

15. Specifically, Plaintiff requests a declaration that the Notice of Lien should be removed and vacated immediately as an improper cloud of title and encumbrance on the Plaintiff's assets because the Notice of Lien is an improper lien and was recorded by Defendant in violation of law.

16. Specifically, the Notice of Lien is improper liens against the Plaintiff's assets and was recorded in violation of Illinois law, for among other reasons, Plaintiff is not an alter ego or nominee of Hammad.

WHEREFORE, Plaintiff, SH & Associates, Inc., prays that the Court enters judgment in its favor and against Defendant, declaring the following: (a) that the Notice of Lien should be removed immediately as an improper cloud on title and encumbrance on the Plaintiff's property and assets; (b) that the Notice of Lien is void; (c) that Plaintiff is not the alter ego or nominee of Plaintiff and, (d) that this Court grant any other relief to which the Plaintiff may be entitled.

COUNT II
Violation of 26 U.S.C.A. §7426

17. Plaintiff incorporates by reference paragraphs 1 through 16 as paragraph 17 of this Count II.

18. At all times there was in effect a Federal statute known as the Internal Revenue Code, ("Revenue Code"). Section 7426 (h) of the Revenue Code allows a plaintiff to recover monetary damages if any officer or agent of the IRS negligently or recklessly violated the terms of Section 7426 of the Revenue Code.

19. The acts of the agents of the IRS including negligently or recklessly filing the Notice of Lien against Plaintiff, without a proper investigation as to the alleged alter-ego relationship between Plaintiff and Hammad, as well as the acts of the agents of the IRS in failing to timely process the Appeal, has caused Plaintiff to incur actual damages in an amount in excess of \$100,000.

20. Specifically, the Notice of Lien caused Plaintiff to shut down its business operations altogether.

21. The IRS failure to timely process Plaintiff's Appeal, despite demand, has made it impossible for Plaintiff to exhaust its administrative remedies within the IRS.

WHEREFORE, Plaintiff, SH & Associates, Inc., prays that the Court enters judgment in its favor and against Defendant, declaring the following: (a) that the Notice of Lien should be removed immediately as an improper cloud on title and encumbrance on the Plaintiff's property and assets; (b) that the Notice of Lien is void; (c) that Plaintiff is not the alter ego or nominee of Plaintiff; (d) entry of a judgment against the United States in an amount in excess of \$100,000 plus statutory interest, costs of this suit and

attorney's fees and, (e) that this Court grant any other relief to which the Plaintiff may be entitled.

SH& ASSOCIATES, INC.,

By: 
One of its attorneys

Ariel Weissberg, Esq.
Rakesh Khanna, Esq.
Weissberg and Associates, Ltd.
401 S. LaSalle St., Suite 403
Chicago, Illinois 60605
T. 312-663-0004
Attorney No. 91781

FROM : HAMMAD

From: 16309861759

Page: 2/3

Date: 2/4/2008 12:20:00 PM

FAX NO. : 16309861759

Feb. 04 2008 12:38PM P2

Internal Revenue Service

2001 Butterfield Road
WSB:5223:Webster
Downers Grove, IL. 60515

Department of the Treasury

08CV4767

JUDGE ANDERSEN

MAG. JUDGE COLE

J. N.

Date: January 31, 2008**S H & ASSOCIATES INC**

2 SHELBURNE DR
OAK BROOK, IL. 60523-1747

Person to Contact:

Ms. B. Webster

IRS Telephone Number:

630-483-5848

Employee Identification Number:

38-07238

Taxpayer Identification Number

348-48-2879

Notice of Federal Tax Lien Filing--Nominee or Alter-Ego

You have been identified as the nominee or alter-ego for Samy Hammad. This letter is to inform you that we have filed a Notice of Federal Tax Lien.

You have the right to appeal this decision. We explain your rights in the enclosed Publication 1660.

There may be other ways that we can resolve this issue. Contact the person named above for further information.

One option you have is to request a Certificate of Discharge from the Federal Tax Lien. However, before we will issue a discharge, you must pay the amount due or post a bond guaranteeing payment. The enclosed Publication 783, provides information on how to request a certificate of discharge.

We will issue a Certificate of Release of Federal Tax Lien within 30 days after you pay the full amount due or within 30 days after we accept a bond guaranteeing payment.

Sincerely yours,



B. Webster
Revenue Officer

Enclosures:

Publication 1660, Collection Appeal Rights

Publication 783, Instruction on How to Apply for a Certificate of Discharge From Federal Tax Lien

Form 688(Y), Notice of Federal Tax Lien

Letter 3177 (DO) (Rev. 04-2003)
Catalog Number: 26921M

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EXHIBIT

tabbles

FROM :HAMMAD

FAX NO. :16309861759

Feb. 04 2008 12:39PM P3

Form **668(Y)**
(Rev. 10-1999)

Department of the Treasury - Internal Revenue Service

Notice of Federal Tax Lien

Small Business/Self Employed Area: 4

Serial Number

For Optional Use by Recording Office

As provided by sections 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

Name of Taxpayer

S H & Associates Inc. as the alter ego Samy Hammad

Residence

2 Shelburne Drive
Oak Brook, IL 60523-1747

IMPORTANT RELEASE INFORMATION: For each assessment listed below, unless notice of lien is refilled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).

Kind of Tax (a)	Tax Period Ended (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refilling: (e)	Unpaid Balance of Assessment (f)
CIVP	09/30/1991	36-3758827	03/27/2002		\$341,648.42
CIVP	12/31/1991	36-3758827	03/27/2002		\$152,459.98
CIVP	03/31/1992	36-3758827	03/27/2002		\$30,128.48
CIVP	12/31/1992	36-3758827	03/27/2002		\$100,428.26
CIVP	06/30/1995	36-3758827	03/27/2002		\$135,298.85
CIVP	09/30/1995	36-3758827	03/27/2002		\$248,168.73
CIVP	12/31/1995	36-3758827	03/27/2002		\$243,444.72

Place of Filing

Recorder of Deeds
DuPage County
Wheaton IL

Total

\$1,251,577.44

This notice was prepared and signed at 2001 Butterfield Road, Downers Grove, IL 60515, on this, the 31st day of January, 2008.

Signature

Title

B. Webster, Employee #36-07236

Revenue Officer, Phone #630-493-5646

(NOTE: Certificate of officer authorized by law to take acknowledgments is not essential to the validity of Notice of Federal Tax Lien Rev. Rul. 71-486, 1971-2 C.B. 408)

Part 2 - Taxpayer Copy

Form 668(Y) (Rev. 10-1999)

This fax was received by GFI FAXmaker fax server. For more information, visit: <http://www.gfi.com>

WEISSBERG AND ASSOCIATES, LTD.

401 South LaSalle
Suite 403
Chicago, Illinois 60605

Telephone: 312/663-0004
Facsimile: 312/663-1514
E-Mail:
ariel@weissberglaw.com

March 3, 2008

Ms. B. Webster
Internal Revenue Service
2001 Butterfield Road
WSB: 5223: Webster
Downers Grove, IL 60515

**BY 1ST CLASS CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Receipt #7007 0710 0001 8931 4297**

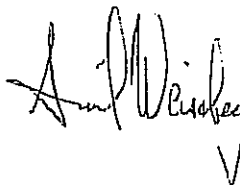
**Re: S H & Associates, Inc., 2 Shelburne Dr., Oak Brook, Illinois, 60523
Employee Identification Number: 36-07236
Taxpayer Identification Number: 348-48-2879**

Dear Ms. Webster:

I am enclosing a Request for a Collection Due Process or Equivalent Hearing for the above-named taxpayer. I will forward under separate letter my Power of Attorney.

Please contact me.

Yours truly,



Ariel Weissberg, for
S H & Associates, Inc.

AW/hw

cc: Mr. Omar Hammad

EXHIBIT

2

tabbles

Request for a Collection Due Process or Equivalent Hearing

Use this form to request a Collection Due Process (CDP) or equivalent hearing with the IRS Office of Appeals if you have been issued one of the following lien or levy notices:

- *Notice of Federal Tax Lien Filing and Your Right to a Hearing under IRC 6320,*
- *Notice of Intent to Levy and Notice of Your Right to a Hearing,*
- *Notice of Jeopardy Levy and Right of Appeal,*
- *Notice of Levy on Your State Tax Refund- Notice of Your Right to a Hearing.*

Complete this form and send it to the address shown on your lien or levy notice. Include a copy of your lien or levy notice to ensure proper handling of your request.

Call the phone number on the notice or 1-800-829-1040 if you are not sure about the correct address or if you want to fax your request.

You can find a section explaining the deadline for requesting a Collection Due Process hearing in this form's instructions. If you've missed the deadline for requesting a CDP hearing, you must check line 6 (Equivalent Hearing) to request an equivalent hearing.

1. Print Name:

SH & Associates, Inc.

If a husband and wife owe the tax liability jointly, please print both names if both want a hearing.

Address:

2 Shelburne Drive

City: Oak Brook State: Illinois Zip Code: 60523

2. Social Security Number or Numbers

SSN 1

SSN 2

Employer Identification Number

36-07236

3. Daytime Telephone Number and Best Time to Call

(312) 663 - 0004

☒ am. ☐ pm.

4. Tax Information

Type of Tax (Income, Employment, Excise, etc. or Civil Penalty)	Tax Form Number (1040, 941, 720, etc)	Tax Period or Periods
Employment/Civil Penalty	941	9-30-91, 12-31-91, 3-31-92, 12-31-92, 6-30-95
		9-30-95, 12-31-95

Request for a Collection Due Process or Equivalent Hearing

5. Basis for Hearing Request (Both boxes can be checked if you have received both a lien and levy notice)

☒ Filed Notice of Federal Tax Lien

☐ Proposed Levy or Actual Levy

6. Equivalent Hearing (See the instructions for more information on Equivalent Hearings)

☐ I would like an Equivalent Hearing - I would like a hearing equivalent to a CDP Hearing if my request for a CDP hearing is too late.

7. Check the most appropriate box for the reason you disagree with the filing of the lien or the levy. See page 4 of this form for examples. You can add more pages if you don't have enough space.

Collection Alternative

☐ Installment Agreement

☐ Offer in Compromise

Lien

☐ Subordination

☐ Discharge

☒ Withdrawal

Please explain: Contrary to the statement on the tax lien, the tax payer is not an alter ego or nominee of Samy Hammad.

My Spouse Is Responsible

☐ Innocent Spouse Relief (Please attach Form 8857, Request for Innocent Spouse Relief, to your request.)

Other

(Use as much space as you need to explain the reason for your request. Attach extra pages if necessary.)

☒ Reason:

Samy Hammad provided to the IRS information evidencing that SH & Associates, Inc. is not an alter ego or the nominee of Samy Hammad. Despite this clear and convincing proof contravening the IRS' position taken in the Notice of Federal Tax Lien Filing, the IRS has pursued its alleged claims wrongfully against SH & Associates, Inc.

I understand the CDP hearing and any subsequent judicial review will suspend the statutory period of limitations for collection action. I also understand my representative or I must sign and date this request before the IRS Office of Appeals can accept it.

SIGN HERE

Your Signature

Amir Wasseh, authorized representative

Spouse's Signature (if a joint request, both must sign)

Date

3-3-08

Date

IRS Use Only

IRS Employee (Print)

Employee Telephone Number

IRS Received Date

FROM :HAMMAD From: 16309861759 Page: 2/3 Date: 2/4/2008 12:20:00 PM
FAX NO. :16309861759 Feb. 04 2008 12:38PM P2

Internal Revenue Service
2001 Butterfield Road
WSB:5223:Webster
Downers Grove, IL. 60515

Department of the Treasury

Date: January 31, 2008

S H & ASSOCIATES INC
2 SHELBURNE DR
OAK BROOK, IL. 60523-1747

Person to Contact:
Ms. B. Webster
IRS Telephone Number:
630-403-5848
Employee Identification Number:
36-07236
Taxpayer Identification Number
348-48-2879

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Publication 783, Instruction on How to Apply for a Certificate of Discharge From Federal Tax Lien
Form 668(Y), Notice of Federal Tax Lien

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CIVP	12/31/1995	36-3758827	03/27/2002		\$243,444.72

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DuPage County
Wheaton IL

Total

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This notice was prepared and signed at 2001 Butterfield Road, Downers Grove, IL 60515, on this, the 31st day of January, 2008.

Signature

B. Webster, Employee #36-07236

Title

Revenue Officer, Phone #630-493-5646

(NOTE: Certificate of officer authorized by law to take acknowledgments is not essential to the validity of Notice of Federal Tax Lien Rev. Rul. 71-488, 1971-2 C.B. 409)

Part 2 - Taxpayer Copy

Form 668(Y) (Rev. 10-1999)

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SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Ms. B. Webster
Internal Revenue Service
2001 Butterfield Rd.
WSB: 5223: Webster
Downer's Grove IL 60515

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

X

☐ Agent☐ Addressee

D. Is delivery address different from item 1?

If YES, enter delivery address below:

☐ Yes☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☒ Registered☒ Return Receipt for Merchandise☐ Insured Mail☒ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number (Copy from service label)

7007 0710 0001 8931 4297

PS Form 3811, July 1999

Hamman

Domestic Return Receipt

102505-00-M-0952

BERG AND ASSOCIATES, LTD.

401 SOUTH LA SALLE

SUITE 403

CHICAGO, ILLINOIS 60605



7007 0710 0001 8931 4297

Ms. B. Webster
Internal Revenue Service
2001 Butterfield Road
WSB: 5223: Webster
Downers Grove, IL 60515

ERG AND ASSOCIATES, LTD.

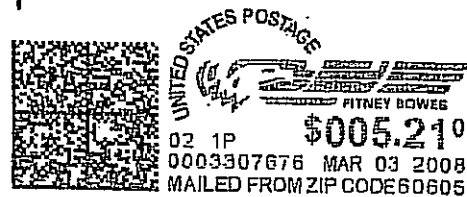
401 SOUTH LASALLE

SUITE 403

CHICAGO, ILLINOIS 60605



7007 0710 0001 8931 4297



Ms. B. Webster
Internal Revenue Service
2001 Butterfield Road
WSB: 5223: Webster
Downers Grove, IL 60515

08CV4767

JUDGE ANDERSEN

MAG. JUDGE COLE

J. N.

Rakesh Khanna

From: Hava Weissberg
Sent: Monday, August 18, 2008 12:51 PM
To: Rakesh Khanna
Cc: Ariel Weissberg
Subject: Email I sent to AW on 7-30-08 re: Samy Hammad

From: Hava Weissberg
Sent: Wednesday, July 30, 2008 4:54 PM
To: Ariel Weissberg
Subject: SH Associates//Hammad

I spoke to Ms. Buckley at the IRS today about SH Associates' appeal and the paperwork we have filed. She said this case has not yet been assigned to an agent in the Appeals Department and that she is not the proper party with whom we should be dealing. She gave our paperwork to the "powers that be" and asked that this case be assigned to someone. She didn't know how long it would take for this to happen, though.

8/20/2008

